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Is Money "Speech"?

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Is Money Speech?

Michael J. Boyle and Miguel Glatzer
Historical Background

• Prior to the 1970s, U.S. campaign spending was limited by an array of federal and state rules
  • Restrictions on corporations, unions and federal employees
  • Individuals were limited
  • Corporate donations funneled through Political Action Committees (PACs)
Historical Background

- Following Watergate, a series of laws in the early 1970s tightened contributions of PACs and individuals to campaigns and parties
- Created Federal Election Commission
- 1976: Buckley vs. Valeo:
  - Ruled that restrictions on campaign spending and finance violated the 1st amendment
  - Individuals and corporations could still have limits both to individual campaigns and across the electoral cycle
Historical Background

• Results:
  • Explosion of PACs and individual funding
  • Rise of “soft money” given to parties for campaign

• Bipartisan Campaign Reform Act (McCain-Feingold) (2002)
  • Bans soft money
  • Banned funding from outside groups
Historical Background

• Citizens United (2010):
  • Ruled that it was a violation of the First Amendment to limit the spending of an external group on a campaign
  • Did not allow unlimited corporate donations, but unlimited corporate issue advocacy
  • Result was the creation of Super PACS which can run ads on behalf of candidates
Historical Background

• McCutcheon vs. Federal Election Commission
  • Ruled that aggregate limits on individuals campaign contributions were violation of the 1st amendment
  • Previous limit per cycle had been $117,000 per person
  • Raises question about whether PAC donations limits will be rolled back
## Campaign Funding per Year

<table>
<thead>
<tr>
<th></th>
<th>Individual</th>
<th>PAC</th>
<th>Super PAC</th>
<th>Non-Disclosing Groups</th>
</tr>
</thead>
<tbody>
<tr>
<td>To each candidate</td>
<td>$2600</td>
<td>$5000</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>To a national party</td>
<td>$32,400</td>
<td>$15,000</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>To state, district and local committee</td>
<td>$10,000</td>
<td>$5,000</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>To any other political committee</td>
<td>$5,000</td>
<td>$5,000</td>
<td>$0</td>
<td>$0</td>
</tr>
<tr>
<td>Issue Advocacy</td>
<td>Unlimited</td>
<td>Barred</td>
<td>Unlimited</td>
<td>Unlimited</td>
</tr>
</tbody>
</table>

Source: FEC, data from 2013
## Data: President Election 2012

<table>
<thead>
<tr>
<th>Candidate</th>
<th>Barack Obama</th>
<th>Mitt Romney</th>
</tr>
</thead>
<tbody>
<tr>
<td>Raised</td>
<td>$715m</td>
<td>$446m</td>
</tr>
<tr>
<td>Spent</td>
<td>$683m</td>
<td>$443m</td>
</tr>
<tr>
<td>With Super Pacs</td>
<td>$1.10b</td>
<td>$1.24b</td>
</tr>
<tr>
<td>Top Sector</td>
<td>Lawyers and Lobbyists ($27m)</td>
<td>Finance, Insurance and Real Estate ($58m)</td>
</tr>
<tr>
<td>Top Donors</td>
<td>University of California*, Microsoft, Google</td>
<td>Goldman Sachs, Morgan Stanley, Bank of America</td>
</tr>
<tr>
<td>Small Money Donations</td>
<td>57%</td>
<td>24%</td>
</tr>
</tbody>
</table>

Source: https://www.opensecrets.org/pres12/
Questions:

• Should there be limits on political donations?
• What are the advantages and disadvantages of doing so?
Limits on Political Donations?

- Yes
  - Reduce corruption
  - Reduce the appearance of corruption
  - Increase trust in government
  - Level the playing field between candidates
  - More party competition

- No
  - Free speech!
  - More speech the better
  - Should be free to criticize your government
  - Campaigns are expensive
  - Population is reliant on mass media
How Would We Limit Campaign Donations?

• How much can an individual donate to:
  • Candidate?
  • Party?
  • To a Private Issue-Based Organization (e.g. NRA, Sierra Club?)
  • In an Election Year?

• Should corporations, non-profits and unions be limited in the same way? Different way?
Disclosure

• How should disclosure work?
  • Should every organization have to disclose its donors?
  • How quickly available, and easily available, should that information be?
  • Should individuals have the right to make a private, undisclosed donation to a candidate?
  • Is sunlight enough to make the system better?
Public Financing?

• What are the advantages and disadvantages of public financing?

• How would we decide:
  • Who gets public financing?
  • How much public funding a candidate should receive?

• With a public financing system, do we:
  • Ban private money?
  • Limit private money?